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February 25, 2002

VIA FACSIMILE, E-MAIL AND REGULAR MAIL

Sarah P. Flanagan, Esq.
Assistant Regional Counsel
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Region 2
290 Broadway
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Re: Bayonne Barrel and Drum Site
Response to Agency Comments to September 28, 2001 Proposal

Dear Sarah:

This letter serves as the Bayonne Barrel Participating Parties Group's (the "Group") response to eight issues raised by the U.S. Environmental Protection Agency ("USEPA") in response to the Group's September 28, 2001 technical proposal. As you know, on September 28, 2001, the Group submitted to USEPA a technical proposal and good faith response to USEPA's July 6, 2001 letter seeking reimbursement of past costs and the performance of response actions at the Bayonne Barrel and Drum Site ("Site"). On November 20, 2001, the Group received a letter from USEPA indicating that although USEPA had not completed its review of the September 28, 2001 proposal, it would benefit from some additional information concerning the technical proposal. The November 20, 2001 letter attached five comments soliciting additional information with regard to the Group's proposal. In addition to the five comments, there were three additional technical questions concerning the proposal that USEPA posed to the Group in an e-mail dated November 30, 2001.

In order to discuss the issues USEPA raised in response to the Group's technical proposal, representatives from the Group, including myself, met with both you and Joe Cosentino on December 14, 2001 at USEPA's offices in Edison, New Jersey. During the meeting, we agreed to submit a written response to USEPA's comments based on our discussions that day. It is the Group's hope to continue its dialogue with USEPA in order to work toward a successful remediation and redevelopment of the Site. Thus, we welcome any

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further questions or comments that you might have in response the Group's comments and proposals below and look forward to our next meeting.

In order to facilitate review of our responses to your comments, we have transcribed your original comment below, and followed each with our response.

USEPA Comment No. 1

The Proposal refers on page 2 (second paragraph) to the use of a Declaration of Environmental Restriction (DER), in conjunction with the proposed low-permeability cap, to eliminate exposure pathways. That appears to be the only reference to the DER in the Proposal. There is no discussion of the proposed content of the DER, or the mechanics of preparing, filing, and enforcing the DER, and/or complying with the continuing requirements associated with a DER under New Jersey regulations. What does the Group anticipate in this regard, what is the projected role of the City of Newark, if any, and to what extent has this point been discussed with Newark?

The Group's Response to Comment No. 1

The Group would like to perform the proposed response actions in a coordinated effort with the City of Newark and its developer, working toward the goal of returning the property to the City's tax roles. Subsequent to submission of the Group's technical proposal and receipt of USEPA's comments, Group representatives met with representatives from the City of Newark and its developer on December 20, 2001, and again on January 11, 2002. We were assured that the City and its developer are prepared and, indeed, anxious to proceed. Accordingly, we anticipate that the Group will conduct response actions at the Site and that the City of Newark, along with its developer, will redevelop the Site for future use.

It is contemplated that any Deed Notice filing will be made pursuant to New Jersey Department of Environmental Protection ("NJDEP") requirements. The mechanics for preparing and filing an environmental Deed Notice are provided at N.J.A.C. 7:26E, Technical Requirements for Site Remediation ("Tech Regs"). A copy of the model Deed Notice, which is published as an appendix to the Tech Regs, was distributed to USEPA representatives at the December 14, 2001 meeting. As current owner of the Site, the City of Newark is required to obtain – along with the Group's assistance – and sign the Deed Notice. The City has indicated its willingness to execute an appropriate Deed Notice in each of its meetings with representatives of the Group. Once the Deed Notice is executed and recorded, conformance with any applicable property restrictions will be the responsibility of the City or any future owner of the property.

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USEPA Comment No. 2

Beyond the question of the DER, what communications has the Group had with Newark? Have Newark and its developer conceptually agreed with the current proposal?

The Group's Response to Comment No. 2

As indicated in the Response to Comment No. 1, representatives of the Group have had two meetings with the City of Newark subsequent to submitting the September 28, 2001 technical proposal. It is our understanding from those meetings that the City of Newark and its developers would be amenable to conducting a coordinated effort with the Group to remediate and redevelop the Site successfully. The City of Newark and its developer have reviewed the Group's September 28, 2001 technical proposal and have indicated that the response actions contemplated thus far are compatible with their future use plans for the Site. They are prepared to develop plans that provide for "no-build" locations on the Site (i.e., in the area of the gas pipeline easements), and to comply with restricted access for other areas of the Site. Although the redevelopment restrictions imposed by certain environmental concerns at the Site will present limitations on the manner in which the Site is developed, the City and its developer have indicated that they can beneficially reuse the property within the framework of those restrictions.

USEPA Comment No. 3

Three pipelines cross the site. Given the elevated concentrations of dioxin, polychlorinated biphenyls (PCBs) and other hazardous substances in the Site soils, how does the Group propose to provide for access to the pipelines by the utility companies?

The Group's Response to Comment No. 3

The Group foresees two possible alternatives to addressing future access to the pipelines. The first is through restriction in the Deed Notice. The Notice would provide that any invasive activities to access the pipelines must be performed under an appropriate Health and Safety Plan providing for air monitoring and OSHA training of individuals that perform the access work. The excavated materials would be staged in an appropriate manner and returned as backfill within a specific time limit (e.g., 90 days).

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Alternatively, review of the data around the easement indicates that the elevated concentrations of dioxin and PCBs may be limited to a finite area within the Yard Area on the southeast portion of the Site. The specific soil borings in the area of the pipeline showing elevated values were near one another -- laterally opposite across the pipeline easement -- at soil borings YA-29 (showing PCBs of 61.2 ppm and dioxins of 8.32 ppb) and YA-39 (showing PCBs of 182 ppm and dioxins of 66.12 ppb) (BBL, 1997). In contrast, the remaining soil borings that bound the easement are all below the response action levels of 50 ppm PCBs and 20 ppb dioxin. These boring include YA-31, YA-24, YA-25, YA-21, YA-2, YA-19, YA-14, YA-27, YA-26, YA-30, YA-32, YA-37, and YA-38.

still needs notices to pipeline workers?

The Group would consider excavating the surface soils between YA-29 and YA-39 and consolidating them within the solidified areas, as discussed further in connection with Comment No. 7 below, with USEPA approval. PCBs and dioxin appear to be problematic in the surface soils, but not in the subsurface soils. Consolidation of the surface soils within the solidified matrix would render the pipeline easement area protective with respect to PCBs and dioxin. The Deed Notice for the Site would still maintain appropriate precautions for lead in the subsurface soils.

USEPA Comment No. 4

The storm drains on the Site should also be addressed. Sediment sampling results showed elevated dioxin, PCBs and lead in the storm drains. Does the Group anticipate removing the current system and constructing a new one or incorporating the existing system into the cap to provide Site drainage?

The Group's Response to Comment No. 4

Based on discussions at the December 14, 2001 meeting with USEPA, we understand that storm drains on the Site must be addressed, either through cleaning and restoration, or by abandoning them beneath the cap and providing for an alternative Site drainage system. We propose to defer any determination at this time, and to address this issue during the design phase of the proposed cap.

One alternative for USEPA's consideration would be to allow the Group to consolidate residuals from cleaning the existing system into the solidified matrix as discussed in Comment No. 7 below.

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USEPA's Comment No 5

What are the requirements for obtaining a waiver of the TSCA regulations governing PCB disposal, as referenced on the first page of the Proposal, and how does the Group anticipate meeting those requirements?

The Group's Response to Comment No 5

This item was discussed further at the December 14, 2001 meeting, and also at a recent site visit on January 22, 2002, with Group and USEPA representatives. Based on those discussions, the Group will be guided by USEPA on how to proceed with satisfying any applicable TSCA requirements.

USEPA Comment No. 6

How would the Participating Parties Group develop the information necessary to meet the requirements of 40 CFR 761.61(c) (e.g., defining the nature, location and extent of the contaminated area, establishing that the contamination is not migrating), and to define the DER.

The Group's Response to Comment No. 6

The Site is bounded on the east and partially on the south by the New Jersey Turnpike and its arteries, and to the north and west by Routes 1 & 9 leading to the Pulaski Skyway. The portion of the Site which is not bounded by the Turnpike artery adjoins the Multiplex Cinema property. The Multiplex Cinema is the site of the former Newark Drive-In, and together with this area of the Bayonne Barrel Site, is located upon the former Newark 15E Landfill. In consideration of these Site-specific limiting factors, it is unlikely that the requirements for defining the nature, location and extent of contaminated areas can be fulfilled, beyond the soils investigation work that has already been performed on-Site.

On that basis, a necessary component of the Deed Notice will be for the NJDEP to accept the property boundaries as defining the Site.

The Group's proposed response actions provide for source removal of volatile organics in the Furnace Courtyard Area; removal of above and below ground tanks with their residuals; containment via capping, and now; solidification of elevated PCBs and dioxin. A Classification

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Exception Area (CEA) for groundwater will also be established, which by definition consists of a written and mapped description of the area in which constituent standards are not or will not be met; identification of the contaminants for which the CEA is established; and an estimate of the longevity of the CEA.

Taking the site-specific limitations together with the proposed response actions, the Group is herewith petitioning USEPA to accept these factors in satisfaction of the requirements found at 40 CFR 761.16 (c). The Group further requests USEPA's assistance in addressing this issue with the State of New Jersey in the context of the Deed Notice.

USEPA Comment No. 7

How would yard hot spots be addressed? Please discuss the possibility of on-site treatment to ensure materials would not migrate and/or to reduce the levels of the contaminants in the case where future excavation might cause workers to come in contact with the buried materials.

The Group's Response to Comment No. 7

During our meeting on December 14, 2001, USEPA requested that further consideration be given to *in situ* treatment of elevated concentrations of PCBs and dioxin in the Yard Area. In response, the Group now proposes to implement solidification in the Yard Area of surface soils (0-2 feet) of soils where previous investigation indicates the presence of PCBs greater than 50 ppm and dioxins greater than 20 ppb.

In this context, solidification refers to the encapsulation of the waste in a monolithic solid of high structural integrity. It does not necessarily involve a chemical interaction between the wastes and solidifying reagents, but would mechanically bind the waste into the monolith. Contaminant migration is restricted by vastly decreasing the surface area exposed to leaching and by isolating the wastes within an impervious capsule. It is accomplished by mixing pozzolanic reagents (e.g., cement, kiln dust, fly ash) with specialty equipment, such as an excavator-mounted injection rake, or in mixing pits with the excavator bucket.

The Group proposes to perform this response action using performance requirements based on physical measurements, such as bearing capacity, unconfined compressive strength, or permeability. Solidification is not a treatment technology for organics, and accordingly, the

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concentrations of PCBs and dioxin are not expected to be reduced as a result of this application. Performance requirements that measure contaminant concentrations, in particular any leaching test that breaks up the solidified mass (such as the TCLP test), are not applicable and could not be used to measure performance in these conditions.

Based on the foregoing, we propose to solidify soils to a depth of two feet around the following soil borings: YA-4, YA-9, YA-10, YA-22, YA-29, YA-39, YA-40, YA-41, YA-48, YA-52, YA-53, and YA-55. A figure is attached to this letter indicating the proposed area of solidification. Additionally, during the design phase of the work, the Group may decide to collect additional surface soils samples for the purpose of reducing the affected area.

USEPA Comment No. 8

How would the Group document the absence of off-site disposal options?

The Group's Response to Comment No. 8

The Group's conclusions concerning the absence of off-Site disposal options is based on investigation and inquiries made during development of the September 28, 2001 technical proposal. Efforts included discussion with the RCRA Hotline; review of the documentation cited by the RCRA Hotline; inquiries to companies knowledgeable of waste characterization and disposal options; and specific discussions with Chemical Waste Management following their evaluation of the Site's data.

Following consultation with the RCRA Hotline, we were directed to USEPA's website for the December 24, 1992 "Clarification On What Constitutes Dioxin Related Materials". The rules are complex and are intended to assist the regulated community with classification of their dioxin-containing waste stream. Importantly, this guidance emphasizes any landfill accepting hazardous waste must be first permitted to accept each of the specific types hazardous waste that are disposed of there. Our inquiries have not revealed any permitted facilities capable of accepting dioxin materials.

During the development of the technical proposal, *de maximis, inc.* contacted disposal outlets in connection with the Yard Area soils. Chemical Waste Management in Model City, New York was already familiar with the Site because they had received data from the BBL Report (1997) from an unnamed party in April 2001. They indicated that based on their review of the data, they could not accept the material for landfill, and quoted prices for incineration only. During the discussion, however, it was revealed that they were not aware of the presence of dioxins in the soil, and did not have the dioxin data in their files.

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Chemical Waste Management indicated that, depending upon the waste code applicable to the soils, they could only accept up to ten times the Land Disposal Restriction values for dioxin for incineration. Certain other waste codes could not be accepted at all. (Reference is made to the earlier mentioned December 1992 USEPA clarification letter for more details.)

Referring to the Land Disposal Restrictions found at 40 CFR 268, the Universal Treatment Standard for TCDD (all Tetrachlorodibenzo-p-dioxins) is 0.001 mg/kg, or 1 ppb. Accordingly, since the "elevated" concentrations at the Site are greater than 20 ppb, the Site material cannot be accepted for incineration as a non-dioxin material.

Finally, we have been in communication with various waste brokers and other entities knowledgeable of waste characterization and disposal options. In the course of our inquiries we have come to learn that there are no disposal outlets in the United States at the present time permitted to receive dioxin wastes. Previously, a commercial incinerator in Coffeyville, Kansas was permitted to receive these wastes, but was reported to have shut down operations in 1998.

We have continued with various inquiries since submittal of the September 28, 2001 technical proposal, and have not made any new determinations in this regard.

Again, we would like to reiterate the Group's desire to continue its dialogue with USEPA about this matter. Please do not hesitate to contact me with any questions or comments that you might have in connection with this letter or the Group's technical proposal as a whole.

Very truly yours,



WILLIAM H. HYATT, JR.

cc: Joseph Cosentino (w/enc.) (via facsimile and e-mail)
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